IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 35865 of 2005(T)

PETITIONER:

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1. SUSHEELA.K.V., 50 YEARS,
   W/O.LATE GOPALAN, POKALARI PARAMBA,
   38/1537/C, EDAKKAD POST, EDAKKAD AMSOM,
   PUTHIYANGADI DESOM, KOZHIKODE TALUK.

2. SUCHITH.V., 24 YEARS, S/O.LATE
   GOPALAN, POKALARI PARAMBA, 38/1537/C,
   EDAKKAD POST, EDAKKAD AMSOM, PUTHIYANGADI DESOM,
   KOZHIKODE TALUK.

3. SUCHITHA.V.G., 19 YEARS,
   D/O.LATE GOPALAN, POKALARI PARAMBA,
   38/1537/C, EDAKKAD POST, EDAKKAD AMSOM,
   PUTHIYANGADI DESOM, KOZHIKODE TALUK.

BY ADV. SRI.T.KRISHNAN UNNI
SRI.P.S.MURALI

RESPONDENTS:

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1. MRS.KAUSALYA, AGED 68 YEARS,
   D/O.RAMAN NAIR, KALATHOL PARAMBA HOUSE,
   SOUTH ANNARA, THRIKKANDIYUR AMSOM,
   ANNARA DESOM, MALAPPURAM DISTRICT.

2. MRS.MADHAVI, 65 YEARS,
   D/O.RAMAN NAIR, KOLATHOL PARAMBA HOUSE,
   SOUTH ANNARA, THRIKKANDIYUR AMSOM,
   ANNARA DESOM, MALAPPURAM DISTRICT.

3. MRS.JANAKI, 57 YEARS,
   W/O.K.P.RADHAKRISHNAN, VALIYAPARAMBIL HOUSE,
   NELLICODE POST, NELLICODE AMSOM & DESOM OF
   KOZHIKODE TALUK.

4. TIRUR URBAN CO-OPERATIVE BANK LTD.,
TIRUR, MALAPPURAM DISTRICT.

5. THE SPECIAL SALE OFFICER,
SENIOR INSPECTOR OF CO-OPERATIVE SOCIETIES,
TIRUR URBAN CO-OPERATIVE BANK LTD.,
TIRUR, MALAPPURAM DISTRICT.

6. M.V.RAJAGOPAL, S/O.AYYAPPAN NAIR,
KOLATHOL PARAMBIL, ANNARA, TIRUR,
MALAPPURAM DISTRICT.

7. ASST.REGISTRAR OF CO-OPERATIVE SOCIETIES
(ADMN), TIRUR, MALAPPURAM DISTRICT.

8. THE KERALA CO-OPERATIVE TRIBUNAL,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.SASINDRAN for R4
SRI.AJITH KRISHNAN for R1 & R2
SRI.K.P.MUJEEB for R6
SRI.SAJU.S.A for R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDERIN ARC 1878/92-93 OF THE RESPONDENT NO. 7 DATED 29.06.1993.

EXT.P2: TRUE COPY OF THE ORDER IN A.P 87/2000 OF THE RESPONDENT NO. 8 DATED 30.09.2005.

EXT.P3: TRUE COPY OF DEATH CERTIFICATE OF GOPALAN DATED 29.04.1997.

EXT.P4: TRUE COPY OF THE TEMORARY SALE CONFIRMATION. ORDER OF THE 5TH RESPONDENT DATED 28.06.2000.

/True Copy/

P.A to Judge.

KURIAN JOSEPH , J

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W.P.(C) NO. 35865 OF 2005

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Dated this the 21st day of June, 2007.

JUDGMENT

The petitioners are aggrieved by Ext.P1 award and Ext.P2 judgment of the Tribunal. Under the provisions of the Kerala Co-Operative Societies Act the 1st respondent availed a loan of Rs.25,000/- from the 4th respondent-bank for purchasing a car for her son-in-law. The ancestral property on which Shri. Gopalan and respondents 1 to 3 had right was mortgaged on the strength of a power of attorney said to have been executed by late Gopalan, one of the guarantors of the 1st respondent. On default, the bank filed arbitration leading to Ext.P1, which is an exparte award. It is the contention of the petitioners that Shri. Gopalan did not have any notice. Apparently, the cause title also shows that the Gopalan was represented by the 1st respondent as his Power of Attorney holder. But the Power of Attorney was not produced and the same was not perused also. According to

the petitioners, Shri. Gopalan had not executed any Power of Attorney. Be that as it may, he died on 08.09.1996 and the recovery proceedings were initiated in the year 2000 leading to the sale of the property over which the petitioners have 1/4th share, which was purchased by the 6th respondent -the son-in-law of the 1st respondent. The Tribunal, it appears, has taken a view that since the Power of Attorney have had received notice, the service is complete. But in the nature of apparently shabby transactions involving members of the same family, the crucial documents should have been called for and the same should have been examined. Even assuming that there is a Power of Attorney whether the same could otherwise make the 1st respondent competent to represent in further proceedings after the death of Gopalan should have been considered by the Tribunal. The Tribunal having not considered these vital questions, the judgment is liable to be set aside. I do so. The matter is remitted to the Co-Operative Tribunal for fresh consideration in accordance with law and in the light of the observations made in

this judgment. The orders as above shall be passed within a period of six months from the date of a copy of this judgment. The interim order passed by this court on 22.12.2005 shall continue till such time. The amount remitted by the petitioner pursuant to the direction issued by this Court shall be credited to the loan account without prejudice to the contentions of the respective parties with regard to its adjustment of the same in future proceedings.

The writ petition is allowed accordingly.

KURIAN JOSEPH, JUDGE.

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